

## SENATE BILL No. 475

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-4-2-40; IC 22-4-8.

**Synopsis:** Unemployment insurance. Requires the unemployment insurance board to determine that certain criteria apply to construction services performed by an individual under a construction contract in order to be considered "employment" for unemployment insurance purposes. Cancels contributions, interest, and penalties against an employer whose protest of a department of workforce development decision that certain individuals performing services for the employer were employees rather than independent contractors was denied.

**Effective:** July 1, 2007.

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January 11, 2007, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 475

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-4-2-40 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2007]: **Sec. 40. As used in this article, "construction contract"**  
4 **means an oral or written agreement involving any activity in**  
5 **connection with the erection, alteration, repair, replacement,**  
6 **renovation, installation, or demolition of a building, structure,**  
7 **highway, or bridge.**
- 8 SECTION 2. IC 22-4-8-1, AS AMENDED BY P.L.108-2006,  
9 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2007]: Sec. 1. (a) "Employment," subject to the other  
11 provisions of this section, means service, including service in interstate  
12 commerce performed for remuneration or under any contract of hire,  
13 written or oral, expressed or implied.
- 14 (b) **Subject to section 2.5 of this chapter**, services performed by  
15 an individual for remuneration shall be deemed to be employment  
16 subject to this article irrespective of whether the common-law  
17 relationship of master and servant exists, unless and until all the



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following conditions are shown to the satisfaction of the department:

(1) The individual has been and will continue to be free from control and direction in connection with the performance of such service, both under the individual's contract of service and in fact.

(2) The service is performed outside the usual course of the business for which the service is performed.

(3) The individual:

(A) is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed; or

(B) is a sales agent who receives remuneration solely upon a commission basis and who is the master of the individual's own time and effort.

(c) The term also includes the following:

(1) Services performed for remuneration by an officer of a corporation in the officer's official corporate capacity.

(2) Services performed for remuneration for any employing unit by an individual:

(A) as an agent-driver or commission-driver engaged in distributing products, including but not limited to, meat, vegetables, fruit, bakery, beverages, or laundry or dry-cleaning services for the individual's principal; or

(B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(d) For purposes of subsection (c)(2), the term "employment" shall include services described in subsection (c)(2)(A) and (c)(2)(B) only if all the following conditions are met:

(1) The contract of service contemplates that substantially all of the services are to be performed personally by such individual.

(2) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation).

(3) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

SECTION 3. IC 22-4-8-2.5 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2007]: **Sec. 2.5. (a) As used in this article, "employment" includes**  
3 **construction services performed by an individual under a**  
4 **construction contract (as defined in IC 22-4-2-40), if the board**  
5 **determines that:**

6 (1) the employer for whom the services are performed has the  
7 right to direct or control the performance of the services; and

8 (2) the individuals who perform the services receive  
9 remuneration for the services performed.

10 (b) In making a determination under subsection (a), the board  
11 may find that the employer for whom the services are performed  
12 has the right to direct or control the performance of the services  
13 only if at least ten (10) of the following criteria apply:

14 (1) The employer directs or controls the manner or method by  
15 which instructions are given to the individual performing  
16 services.

17 (2) The employer requires particular training for the  
18 individual performing services.

19 (3) Services performed by the individual are integrated into  
20 the regular functioning of the employer.

21 (4) The employer requires that services be provided by a  
22 particular individual.

23 (5) The employer hires, supervises, or pays the wages of the  
24 individual performing services.

25 (6) A continuing relationship between the employer and the  
26 individual performing services exists that contemplates  
27 continuing or recurring work, even if not full-time work.

28 (7) The employer requires the individual to perform services  
29 during established hours.

30 (8) The employer requires that the individual performing  
31 services be devoted on a full-time basis to the business of the  
32 employer.

33 (9) The employer requires the individual to perform services  
34 on the employer's premises.

35 (10) The employer requires the individual performing services  
36 to follow the order of work established by the employer.

37 (11) The employer requires the individual performing services  
38 to make oral or written reports of progress.

39 (12) The employer makes payment to the individual for  
40 services on a regular basis, such as hourly, weekly, or  
41 monthly.

42 (13) The employer pays expenses for the individual

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performing services.

(14) The employer furnishes tools and materials for use by the individual to perform services.

(15) The individual performing services has not invested in the facilities used to perform services.

(16) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services.

(17) The individual performing services is not performing services for more than two (2) employers simultaneously.

(18) The individual performing services does not make the services available to the general public.

(19) The employer has a right to discharge the individual performing services.

(20) The individual performing services has the right to end the individual's relationship with the employer without incurring liability under an employment contract or agreement.

SECTION 4. [EFFECTIVE JULY 1, 2007] (a) As used in this SECTION, "board" refers to the Indiana unemployment insurance board created IC 22-4-18-2.

(b) As used in this SECTION, "department" refers to the department of workforce development established by IC 22-4.1-2-1.

(c) This SECTION applies to an employer whose protest of a decision by the department that certain individuals performing services for the employer were employees rather than independent contractors was denied in the period beginning October 15, 2006, and ending November 15, 2006.

(d) If, as the result of a denial described in subsection (c), contributions under IC 22-4-10-1 and penalties and interest under IC 22-4-29 have been assessed against an employer described in subsection (c) and remain unpaid on July 1, 2007, all the contributions, penalties, and interest remaining unpaid on July 1, 2007, are canceled, and neither the department nor the board may take any further action to collect those contributions, penalties, and interest.

(e) This SECTION expires on January 1, 2008.

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